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IN THE

Supreme Court of the United States of America

OCTOBER TERM, 1941

No. 1259-1260

MARLIN N. HOLTON

vs. No. 21839

THE STATE OF TEXAS

and

MARLIN N. HOLTON

vs. No. 21860

THE STATE OF TEXAS

Petition For Writ of Certiorari to the Court of Criminal Appeals of the State of Texas

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To be briefed later.

IN THE

Supreme Court of the United States of America

OCTOBER TERM, 1941

No._____

MARLIN N. HOLTON

vs. No. 21859

THE STATE OF TEXAS

and

MARLIN N. HOLTON

vs. No. 21860

THE STATE OF TEXAS

Petition For Writ of Certiorari to the Court of Criminal Appeals of the State of Texas

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May It Please The Court:

This petition is presented in the two cases together because they were tried on the same day, appealed together, the opinions refer to each other and the same federal question was raised in each case below and for other reasons that will be apparent.

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED

I.

Statement of Facts

Marlin Holton, petitioner, a nineteen year old homesick, Louisiana lad, inducted with his National Guard Company into the United States Army, stationed at Camp Hulen, Texas (Matagorda County), received information that his mother was about to die in a Louisiana Hospital; distraught he borrowed without consent an officer's car, woke up a filling station boy and forced him to lend him $8.90, saying, "I've got to have some money; you don't think I'll pay it back but I will."

He did see his mother, returning from Louisiana to within ten miles of his camp and was found asleep in the car by the sheriff; subsequently, and wholly uninformed as to his legal rights, petitioner was tried for two felonies (under the evidence one being a capital felony) without any counsel or advice, pleading guilty, but stated to the court that he wanted counsel in each of the cases. A "voluntary confession" made in jail to a deputy sheriff (later repudiated by petitioner) appears in the robbery case (No. 21859 below) but not in the car theft case (No. 21860) and petitioner was awarded 5 years in the former case and 2 years in the latter, which judgments became final in the highest state court of Texas on February 25, 1942.

Petitioner respectfully seeks a review of the judgments of the Court of Criminal Appeals in each of these cases limited to the questions presented below and others apparent of record.

Jurisdiction

The jurisdiction of the Court is invoked under Sec. 237 of the Judicial Code as amended (Title 28, p. 334), the Federal question having been presented to the state appellate court by counsel other than the writer (however, not to the trial court, because of no counsel).

Questions Presented

I.

The primary question presented is whether the trial court had jurisdiction to try these cases, under the circumstances, in view of the "due process" clause of the Fourteenth Amendment of the Constitution of the United States.

II.

Whether the "due process" clause of the 14th Amendment is violated by a court in not appointing counsel when counsel is called for by a defendant, especially in a case which under the facts in evidence is a capital felony under the Texas statute.

III.

Whether in the face of a plain provision of the Texas Constitution providing for the Court of Criminal Appeals hearing jurisdictional matters outside the record, the court could refuse to consider affidavits affecting its jurisdiction to pass on anything save "the sufficiency of the testimony in connection with a confession."

Constitution and Texas Statutes Involved

U. S. Constitution: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Art. VI: "In all criminal prosecutions, the accused shall enjoy * * * ; and to have the assistance of counsel for his defense."

Sec. 10 of the Texas Constitution: "In all criminal prosecutions, the accused shall have a speedy, public trial by an impartial jury. * * * He shall have the right of being heard by himself or counsel or both, and shall be confronted with the witnesses against him, * * * ."

The trial court evidently construed *Art. 491, Code of Criminal Procedure of Texas:* "There shall be no arraignment of a defendant except upon an indictment

for a capital offense" as did the court below, that the word "arraignment" meant something other than it is ordinarily construed to mean, to-wit, that a defendant should be called on to plead to an indictment "guilty" or "not guilty", and that no matter how ignorant or uninformed a defendant may be, the trial court was under no obligation to see that he was advised by counsel of any kind. The record shows the court below so held. It is submitted to the court that said statute so construed does away with the above quoted constitutional provisions, state and Federal, and is in direct conflict with *Johnson v. Zerbst, Warden*, 304 U. S. 458; 82 L. Ed. 1463, and numerous authorities therein cited and quoted from. Each case stands on its own peculiar facts and while this is a state case, still the fact that this petitioner was a young man, only nineteen years old, without any experience in a court room, and that he asked for a lawyer's advice certainly is entirely inconsistent with the idea that he "intelligently" waived that right from any practical standpoint.

B.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. Upon the undisputed facts, the failure of the court to appoint counsel for petitioner in his trials deprived him of his constitutional rights under the Fourteenth Amendment to the Constitution.

II. The trials, convictions and sentences of petitioner, under the circumstances, deprived him of his liberty without due process of law in violation of the Fourteenth Amendment.

III. Petitioner's convictions in violation of the Fourteenth Amendment is a nullity in that he was denied counsel, and further, that by the decision of the Court of Criminal Appeals of the State of Texas, he, the petitioner, was deprived of that fair and impartial consideration of his constitutional rights and privileges applicable to all citizens of the United States regardless of race, creed, or color.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Criminal Appeals, State of Texas, Austin, Texas, commanding that Court to certify and to send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the cases numbered and docketed Marlin N. Holton versus the State of Texas, Nos. 21859 and 21860, and that the judgment herein may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever so pray.

MARLIN HOLTON,
By ALEXANDER McF. MOOD,
Attorney for Petitioner.